UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

SANDERSON FARMS, INCORPORATED

and

Case 15-CA-089244

TINA TAYLOR

ORDER

The petition and first amended petition to revoke subpoena duces tecum B-626194 filed by Sanderson Farms, Incorporated are denied.¹ The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoenas. See generally *NLRB v. North Bay Plumbing, Inc.* 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).²

In the first amended petition, the Employer submits the text of the initial petition with the added argument that the Board does not have the required constitutional quorum to decide to enforce the subpoena. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has found that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, ____ F.3d ____ (D.C. Cir. 2013). However, as the court itself acknowledged, its decision is in conflict with at least three other courts of appeals. *See Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.

² The Petitioner asserts that subpoena paragraphs 1, 2, and 9 seek confidential medical information about employees that should not be disclosed under Federal law, including the Health Insurance Portability and Accountability Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act. The Petitioner,

Dated, Washington, D.C., March 13, 2013.

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

however, offers no argument supporting that assertion. Nevertheless, in an abundance of caution, the Regional Director shall ensure that this Order is implemented in a manner consistent with those laws.